

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

Jennette Shannon,

Plaintiff,

Case No. 21-cv-13035

v.

Judith E. Levy

United States District Judge

Flex N Gate Detroit, LLC, *et al.*,

Mag. Judge Anthony P. Patti

Defendants.

_____/

**ORDER DISMISSING THE ACTION WITHOUT PREJUDICE
AGAINST DEFENDANT MUTUAL OF OMAHA INSURANCE
COMPANY UNDER FED. R. CIV. P. 4(m)**

On April 21, 2023, the Court ordered Plaintiff Jennette Shannon to show cause why Defendant Mutual of Omaha Insurance Company should not be dismissed due to Plaintiff's failure to serve this Defendant within ninety days of filing the complaint, as required by Federal Rule of Civil Procedure 4(m), and due to her failure to prosecute the case against it pursuant to Eastern District of Michigan Local Rule 41.2 and Federal Rule of Civil Procedure 41(b). (ECF No. 26.) In its show cause order, the Court specified that Plaintiff's response was due by April 28, 2023. (*Id.* at PageID.1050.) On April 29, 2023, one day after the Court's

deadline had passed, Plaintiff filed a response in which she does not dispute that she has not served Defendant Mutual of Omaha Insurance Company and does not oppose the dismissal without prejudice of this Defendant. (*See* ECF No. 27, PageID.1053–1055, 1062.)

Rule 4(m) provides that “[i]f a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” Fed. R. Civ. P. 4(m). Plaintiff has not served Mutual of Omaha Insurance Company at any point since she brought this case in state court on November 29, 2021 or since Defendant Flex N Gate Detroit, LLC removed the case on December 30, 2021. Because Rule 4(m)’s ninety-day period has long since elapsed and Defendant Mutual of Omaha Insurance Company has still not been served, the action is dismissed without prejudice against this Defendant under Federal Rule of Civil Procedure 4(m).

IT IS SO ORDERED.

Dated: May 3, 2023
Ann Arbor, Michigan

s/Judith E. Levy
JUDITH E. LEVY
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or first-class U.S. mail addresses disclosed on the Notice of Electronic Filing on May 3, 2023.

s/William Barkholz
WILLIAM BARKHOLZ
Case Manager